Supreme Court of the United States

OCTOBER TERM, 1966

No. 98

CHARLES ROBERT ANDERS, PETITIONER

vs.

CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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[fol. 1]

IN THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MERCED

No. 4638

[File Endorsement Omitted]

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

vs.

CHARLIE ANDERS, CLIFFORD JONES, DEFENDANT

INFORMATION—filed June 21, 1957

Information for Possession of a Narcotic, a violation of Section 11500 of the Health & Safety Code of the State of California, a felony.

Charlie Anders and Clifford Jones are accused by the District Attorney of Merced County, State of California, by this Information of the crime of Possession of a Narcotic, a violation of Section 11500 of the Health & Safety Code of the State of California, a felony, committed as follows:

The said Charlie Anders and Clifford Jones on or about the 28th day of May 1957, in the County of Merced, State of California, and prior to the filing of this Information, [fol. 2] did wilfully and unlawfully possess a narcotic, to wit: marijuana, without the written prescription of a physician, dentist, chiropodist, or veterinarian licensed to practice in this state.

STEPHEN P. GALVIN District Attorney
of Merced County, State of California

By /s/ BEN CURRY, JR.
Deputy District Attorney

[fol. 6]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

No. 4638

[Title Omitted]

* * * *

ABSTRACT OF JUDGMENT—filed August 8, 1957

PRESENT:

HON. R. R. SISCHO
[fol. 7] Judge of the Superior Court

Ben Curry,
Deputy Prosecuting Attorney

Donald R. Fretz, Public Defender
Counsel for defendant

THIS CERTIFIES THAT on August 8, 1957, judgment of conviction of the above named defendant was entered as follows:

(1) Case No. 4638 Count No. I

On his plea of "Not Guilty" he was convicted by Jury of a felony Possession of a Narcotic in violation of Section 11500 of the Health & Safety Code of the State of California

Defendant was not armed with a deadly weapon at the time of his commission of the offense or a concealed deadly weapon at the time of his arrest within the meaning of Penal Code Section 3024.

(2) Defendant was not adjudged an habitual criminal within the meaning of Subdivision a or b of Section 644 of the Penal Code and the defendant is not an habitual criminal in accordance with the provisions of Subdivision (c) of that section.

(3) IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the said defendant be punished by

imprisonment in the state prison of the State of California for the term provided by law, and that he be remanded to the Sheriff of the County of Merced and by him delivered to the Director of Corrections of the State of California at CALIFORNIA MEDICAL FACILITY AT [fol. 8] VACAVILLE

(4) TO THE SHERIFF of the County of Merced and to the Director of Corrections at California Medical Facility at Vacaville:

Pursuant to the aforesaid judgment this is to command you, the said Sheriff, to deliver the above named defendant into the custody of the Director of Corrections at the California Medical Facility at Vacaville at your earliest convenience.

WITNESS my hand and seal of said Court this 8th day of August, 1957.

E. T. JOHNSON Clerk

By MAGDALENA CHAVEZ, Deputy

[SEAL]

[File Endorsement Omitted]

[fol. 23]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

Case No. 4638

[File Endorsement Omitted]

* * * *

NOTICE OF APPEAL—filed November 5, 1957

TO: THE HONORABLE JUDGE CISCO, OF THE SUPERIOR COURT IN AND FOR THE CITY, AND COUNTY OF MERCED CALIFORNIA:

Comes now, Charles R. Anders, the named defendant in the above Notice and makes known that he does hereby file Notice of Appeal from the judgment rendered in this Court on the 8th day of August, 1957.

It is further requested that this Court certify and transmit to the District Court of Appeal, the Clerks Transcript, the Reporters Transcript and together with all particulars and subsequent rulings for an adequate and speedy determination of this Cause.

/s/ CHARLIE R. ANDERS

Respectfully Submitted:

CHARLES R. ANDERS
P.O. Box A-42880
Represa, California
In Propria Persona

[fol. 27]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 29]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

3 Crim. 2880

[File Endorsement Omitted]

PEOPLE OF THE STATE OF CALIFORNIA

vs.

CHARLIE ANDERS

ORDER APPOINTING COUNSEL, ETC.—filed June 27, 1958

By the Court:

Appellant having filed an affidavit stating that he is without funds and requesting the appointment of counsel, it is ordered that MR. PATRICK R. MURPHY, Attorney at Law, who has consented to serve be and he is hereby appointed to act as counsel for appellant on this appeal.

Time to file appellant's opening brief is hereby extended until July 27, 1958.

Dated: June 27, 1958

/s/ Van Dyke
VAN DYKE,
Presiding Justice

Mail to:

Mr. Patrick R. Murphy
Attorney at Law
503 Nicolaus Bldg.
Sacramento, Calif.

Attorney General-Sacramento

Robert A. Heinze, Warden
Folsom State Prison

Merced County Clerk

CHARLIE ANDERS:
Box A-42880
Represa, Calif.

Please send your copy of the transcript to Mr. Murphy as soon as possible!

* * * *

[fol. 30]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

PATRICK R. MURPHY
Attorney at Law
503 Nicolaus Building
Sacramento, California
Gilbert 3-6508

August 1, 1958

3 Crim. 2880
FILED
Aug 4 - 1958
Dist. Court of Appeal-Third Dist.
L. A. ENDRES, Clerk
By /s/ Kramer, Deputy

Hon. B. F. Van Dyke, Presiding Justice
Third Appellate District
119 Library & Courts Building
Sacramento 14, California.

Dear Judge Van Dyke:

This is to advise you that I have received and examined the trial transcript of CHARLIE ANDERS as it relates to his conviction of the crime of possession of narcotics.

I will not file a brief on appeal as I am of the Opinion that there is no merit to the appeal. I have visited and communicated with Mr. Anders and have explained my views and opinions to him as they relate to his appeal.

Mr. Anders has advised me that he wishes to file a brief in this matter on his own behalf.

Very truly yours,

/s/ Patrick R. Murphy
PATRICK R. MURPHY

PRM/ab
CC/Charlie Anders
Box A-42880
Repressa, California

* * * *

[fol. 31]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

August 4, 1958

CHARLIE ANDERS
BOX A-42880
Represa, Calif.

Re: PEOPLE vs. CHARLIE ANDERS
3 Crim. 2880

We have been advised by your court appointed attorney that after examination of the record he can find no merit to your appeal.

This court will not appoint a new attorney to represent you. If you wish, you may file a brief yourself. If we do not hear from you within 30 days, the record will be given to the court for review and decision.

Very truly yours,

L. A. ENDRES, Clerk

by: /s/ Kramer
Deputy Clerk

* * * *

[fol. 32]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

In re CHARLES ANDERS on habeas corpus

3 Criminal 3757

[File Endorsement Omitted]

PETITION—filed January 21, 1965

Name Charles Anders
Box No. A-42880-A, *Represa, Calif.*
Date 1/17, 1965

Mr. Wilfried J. Kramer, Clerk
District Court of Appeal
Third Appellate District
Sacramento, California

Dear Sir.

I received your letter, dated Jan. 10, informing me that you do not have an extra copy of my records to let me have. However, all I wanted was a duplicate copy of the ones that you have.

Anyway, under the circumstances, I would like for you to place my case back on appeal, because I were denied counsel to represent me at the time my appeal was affirmed. My case is in 167 Cal. App. 2d. It was affirmed in March of 1959, I believe.

I would like to call your attention to Douglas vs California, Cal. Penal Code §§ 1225, 1237). His case is (No. 34 Term, 1962.), handed down [March 18, 1963.]

From a criminal conviction, we need not now decide whether California was to provide counsel for an indigent seeking a discretionary hearing from the California Supreme Court after the District Court of Appeals had [fol. 33] sustained his conviction (see Cal. Const. Art. 6 § 4C; Cal. Rules 28, 29), or whether counsel must be

appointed for an indigent seeking review of an appellate affirmance of his conviction in this court by appeal as of right or by petition for a writ of certiorari which lies within the courts discretion. But it is appropriate to observe that a state can, consistently with the fourteenth Amendment, provide for differences so long as the result does not amount to a denial of due process or an "invidious discrimination." William vs Lee Optical Co., 348 U.S. 483, 489; Griffin vs Illinois, supra. p. 18. Absolute equality is not required; lines can be and are drawn and we often sustain them. See Tigner vs Texas, 310 U.S. 141; Goesaert vs Cleary, 335 U.S. 464. But where merits of the one and only appeal an idigent has as of right are decided without benefit of counsel, we think are unconstitutional line has been drawn between rich and poor.

When an indigent is forced to run this ganlet of a preliminary showing of merit, the right to appeal does not comport with fair procedure. In the federal courts, on the other hand, an indigent must be afforded counsel whenever he challenges a certification that the appeal is not taken in good faith. Johnson vs United States, 352 U.S. 565.

[fol. 34] The federal courts must honor his request for counsel regardless of what they think the merits of the case may be; and, "representation in the role of an advocate is required." Ellis vs United States, 356 U.S. 674, 675. In California, however, once the court has "gone through" the record and denied counsel, the indigent has no recourse but to prosecute his appeal on his own, as best he can, no matter how meritorious his case may turn out to be. The present case, where counsel was denied petitioners on appeal, shows that discrimination is not between "possibly good and obviously bad cases," but between cases where the rich man can require the court to listen to argument of counsel before deciding on the merits, but a poor man cannot. There is lacking that, that equality demanded by the Fourteenth Amendment where the rich man, who, appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for

himself. The indigent, where the record is unclear or the errors are hidden, has only the right to a meaningless ritual, while the rich man has a meaningful appeal.
[fol. 35] We vacate the judgment of the District Court of Appeals and remand the case to that Court for further proceedings not inconsistent with this opinion.

It Is So Ordered.

Any consideration that you give me, will be deeply appreciated. Thank you very much. May I hear from you soon.

Respectfully Submitted,

/s/ Charles Anders
A-42880-A
Represa, California

* * * *

[fol. 36]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

3 Criminal 3757

[File Endorsement Omitted]

In re CHARLES ANDERS on habeas corpus

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS—January 21, 1965

By the Court:

The petition for writ of habeas corpus to reinstate applicant's appeal is denied since the procedure prescribed by In re Nash, 61 A.C. 538, was followed in this case and this court has again reviewed the record and has determined the appeal was without merit.

/s/ Pierce
PIERCE, P. J.

cc:

Charles Anders
Thomas C. Lynch, Attorney General

* * * *

[fol. 37]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[File Endorsement Omitted]

Crim. 9122

* * * *

CHARLES ANDERS, PETITIONER

vs.

CALIFORNIA, ET., AL, ROBERT A. HEINZE

S.Ct. Crim. .....
Civil No. .....
Pro. Persona

PETITION FOR WRIT OF HABEAS CORPUS—filed June 25, 1965

To: THE HONORABLE CHIEF JUSTICE TRAYNOR, AND ASSOCIATES JUSTICES OF THE ABOVE ENTITLED COURT

Petitioner is seeking his release, from imprisonment at the California State Prison, in Represa, California. Petitioner is being held illegal and unlawful, by Robert A. Heinze and Director Walter Dunbar of Folsom State Prison.

Petitioner is filling herein a petition for writ of Habeas Corpus, and ask the writ be treated as a traverse in return:

[fol. 38] (STATEMENT OF FACTS)

On or about August the 8th, 19/57, in the city and county of Merced, California. Your petitioner was tried and found guilty, by a jury for the crime of possession of narcotic. And at that time, petitioner was sentence to prison, which petitioner, appeal the decision. And on or about March, 11, petitioner appeal was affirmed. (See people vs Anders, 167 Cal. 2d. Crim. 4638.

Your petitioner, requested a counsel to represent petitioner on appeal. And at that time, counsel was appoint-

ed to represent petitioner from the Appelleate Court, Third District. But after the court appointed counsel, read your petitioner's transcript, he withdrew from petitioner's appeal. And at that time, he submitted a letter to the court, stating that petioner didn't haye any merits. The Appellate Court dismissed him, and informed petitioner's appeal, in Pro-Persona. Petitioner, made three motions to the court thereafter, asking them to appoint petitioner another counsel, but each time petitioner's request, was denied. So petitioner was force to prepare his own brief and send it in, in Pro-Persona.

So on about January 15, 19/65, petitioner wrote the Appellate Court, asking them to reinstate petitioner's appeal, under the rule of Douglas Vs California, and also, under Malloy Vs Hogan.

I am going to quote the letter, that petitioner, received from the Appellate Court, dated: January 21, 1965.

(See Exhibit A.)

In re: 3 Crim. 3757

On habeas Corpus

By the Court:

The petition for writ of habeas corpus to reinstate applicant's appeal is denied, since the procedure prescribed by in re Nash, 61 A.C. 538, was folloed in this case and this court again reviewed the record and has decided that the case has no merits. Dated: January 21, 1965.

[fol. 39] So on about January 31, your petitioner wrote the appellate court again, requested that they reconsider their present ruling place petitioner back on his appeal. And I am going to quote to this Honorable court the reply that I received from the court.

Mr. Charles Anders
Box-A-42880-A
Represa, California

Re: Charles Anders on habeas corpus
3 Crim. 3757

Dear Sir:

On January 21, 1965, the court denied your petition for writ of habeas to reinstate your appeal. This determination is now final as to this court. The court cannot consider the argument contained in your letter of January 31, 1965 as it is a repetition of the petition previously denied.

Very truly yours,

WILFRIED KRAMER, Clerk.

[fol. 40] (Points And Authority)

Douglas vs State of California, 372 U.S. 353. Douglas And Bennie Will Mayes was found guilty for 13 felonies and sent to prison. Both appeled as of right to California District Court, and their conviction was affirmed. 187 Cal. 802, 10 Rptr. Both Meyes and Douglas then petitioned for descretionary review in the California Supreme Court, but their petition were denied without a hearing 187 Cal. App. 2d 813. We granted certiorari. 368 U.S. 815.

Although several questions are presented in the petition for certiorari, we address ourselves to only one of them. The record shows that petitioners requested, the assistance of counsel on appeal, and they were denied, even though, it plainly appeared they were indigents. In denying petitioner's request, the California District Court of appeal stated that it had "gone through the record and had come to the conclusion that" no good whatever could be served by appointment of counsel." 187 Cal. 2d 802, 10 Cal. Rptr. 188, 194. The District Court of Appeal was acting in accordance with a California rule of criminal procedure which provides that state appellate courts, upon the request of an indigent for counsel, may make "an in-

dependent investigation of the record and determine whether it would be of advantage to the defendant or helpful to the appellate court to have counsel should appointed . . . After such investigation, appellate courts should appoint counsel if in their opinion, it would be helpful to the defendant or the court, and should deny the appointment of counsel only if in their judgment such appointment would be of no value to either the defendant or the court." People vs Hyde, 51 Cal. 2d 152, 154.

[fol. 41] *We agree, however, with justice Traynor of the California Supreme court, who said that the "(denial) of counsel on appeal to an indigent would seem to be a discrimination at least as invidious as that condemned in Griffin vs Illinois . . . People vs Brown 55 Cal. 2d 64, 71, 357 P. 2d 1072 (concurring opinion.) In Griffin vs Illinois, 351 U.S. 12, we held that a state may not grant appellate review in such a way to discriminate against some convicted defendants on account of their poverty. There, as in Draper vs Washington Post . . the right to a free transcript on appeal in issue. Here the issue is whether or not an indigent shall be denied the assistance of counsel appeal . . . In either case the evil is the same; Discrimination against the indigent . . . For there can be no equal justice where the kind of an appeal a man enjoys, "depend on the amount of money he has," Griffin vs Illinois, supra, at P. 19.*

In spite of California's forward treatment of indigents, under it present practice type of an appeals hinges upon whether or not he can pay for the assistance of counsel. If he can the appellate court passes on the merits of his case only after having the full benefit of written briefs and oral argument by counsel. If cannot the appellate court is forced to prejudge the merits before it can even determine whether counsel should be provided. At this stage in the proceeding only the barren record speaks for the indigent, and, unless the printed pages show that an injustice has been committed, he is forced to go without a champion on appeal. Any real chance he may have had of showing that his appeal has hidden merits is deprived him when the court decides on an exparte examination of the record that the assistance of counsel is not required.

We are not here concerned with problem that might arise from the denial of counsel for discretionary or manatory review beyond the stagein the appellate process at which the claims have once been presented by lawyer and passed upon by an appellate court.

[fol. 42] *We are dealing only with the first appeal, granted as a matter of right to rich and poor alike (Cal. Penal Code (1235, 1237), from a criminal conviction. We need not now decide whether California would have to provide counsel for an indigent seeking a discretionary hearing from the California Supreme Court after the District Court of appeals had sustained his conviction (see 28, 29), or whether counsel must be appointed for an conviction in this court by appeal as of right or by petition for a writ of certiorari which lies within the court's discretion. But it is appropriate to observe that a state can, consistently with the Fourteenth Amendment, provide for difference so long as the result does not amount to a denial of due process or an" invidious discrimination. William vs Lee Optical Co., 348 U.S. 483, 489: Griffin vs Illinois, supra, P. 18. Absolute equality is not required: lines can be and are drawn and we often sustain them. (See Tigner Vs Texas, 310 U.S. 141; Goesart vs Cleary, 335 U.S. 464. But where the merits of the one and only appeal an indigent has of right are without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor.*

When an indigent is forced to run this ganlet of a preliminary showing of merit, the right to appeal does not comport with fair procedure. In the federal courts, on the other hand, an indigent must be afforded counsel on appeal whenever he challenges a certification that the appeal is not taken in good faith. Johnson vs United States, 352 U.S. 365. The federal court must honor his request for counsel regardless of what they think the merit of the case may be: and representation in the role of an advocate is required." In California, however, once the court has "gone through" the record and denied counsel, the indigent has no recourse but to prosecute his appeal on his own. as best he can, no matter how meritorious his case may be. The present case, where counsel was denied

petitioners on appeal, shows that the discrimination is not between "possibly good and obviously bad cases," but between cases where the rich man can require the court to Listen to argument of counsel, before deciding on the merits, but a poor man Cannot.

[fol. 43] There is lacking that equality demanded by The Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel" examination into the record, research of law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merits, is forced to shift for himself. The indigent, where the record is unclear or the errors are hidden, has only the right to meaningless ritual, while the rich man has a meaningful appeal.

It is reverse.

"When society acts to deprive one of its members of his life, liberty or property, it takes most awesome steps, No general respect for, nor adherence to, the law as a whole can well be expected without judicial recognition of the paramount need for prompt, eminently fair and sober criminal procedures. The methods we employ in the enforcement of our criminal law have aptly been called the measure by which equality of our civilzation may be judged."Coppedge vs United States, 369 U.S. 438, 449. See People vs Collins, 220 C.A. 2d page 565, 566.)

Upon appeal judgment was affirmed on April 3, 1953.

In people vs Collins, 117 Cal: App, 2d 175, the California Supreme Court denied a hearing and defendant (page 566) appealed to the United State Supreme Court which on October 12, 1953, dismissed the appeal, but threated it as a petition for writ of certiorari and denied the same (346 U.S. 803 (74 S. Ct. 33, 98 L. Ed. 334). Defendant application for appointment of an attirney to represent him on appeal had been denied before the hearing on the merits, presented on May 21, 1963, a petition for recall of remittittur and appointment of counsel to represent him on appeal, relying upon Douglas Vs State of California, 372 U.S. 353, decided March 18, 1963. In that case

the United States court itself vacated the judgment of division three of this court for failure to appoint counsel and remanded the cause for futher proceedings not inconsistent with the opinion. Complying with the implied direction of said case and Gideon Vs Wainwright, 372 U.S. [fol. 44] 335 and Vaquez Vs District Court of Appeal, 59 Cal. 585.

In re Martin, 58 Cal. 2d 133. We on May 28, 1963, recalled the remittitur, vacated the judgment, appointed present counsel to represent appellant throughout further stages of cause, and gave him time to present a brief on behalf of appellant. *This was done and the cause is now before us for a second time upon the merits and after over 10 years period.*

Your petitioner, sentence is also void, and illegal because the prosecuting attorney, commenting to the jury (6 or 7 times about your petitioner, not taking the witness stand and denying the charges against him. And the judge also violated petitioner constitutional rights, by instructing the jury about your petitioner not taken the witness stand and deny the charged against petitioner. I am going to quote to this Honorable court, the instruction that judge Cisco, gave to the jury. Quote:

"It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, whether or not he does testify rests entirely in his own decision. As to any evidence or facts against him which the defendant can reasonably be expected to deny or explain because of facts within his knowledge, if he does testify or if, through he does testify, he fails to deny or explain such evidence, the jury may take that failure into consideration as tending to indicate the truth of such evidence as indicating that among the inferences that may be reasonably therefrom those unfavorable to the defendant are the more probable. The failure of a defendant to deny or explain evidence against him does not, however, create a presumption of guilt or by itself warrant an inference of guilt, nor does it relieve the prosecution of its burden of proving every essential element of the crime and the guilt of the defendant beyond a reasonable doubt.

[fol. 45] (See Malloy Vs Hogan, 378 U.S. page 1. The court.",We granted certiorari. 373 U.S. 948. The court." We hold that the Fourteenth Amendment guaranteed the privilege against petitioner the protection of the Fifth Amendment's privilege against self-incrimination, and that under the applicable federal standard, the connecticut Supreme Court Errors erred in holding that the privilege was not invoked . . . (continue on page 4. The extent to which the Fourteenth Amendment prevents invasion of rights numerated on the first Eight Amendments has been considered in numerous cases in this court since the Amendment to incorporate all eight of the Amendments, from the decision in 1897 in Chicago, B. & Q. Co. Vs Chicago, 166 U.S. 226, which held that the Due Process Clause requires the states to pay just compensaction for private property taken for public use. It was on the Authority of that decision that the court said in Twining Vs New Jersey, supra, that"It is possible that some of the personal rights safeguarded by the first eight Amendment (continue on 5, against national action may also be safe-guarded against state action, because a denial of them would be a denial of due process of law."211 U.S., at 99, (continue on page 6) Quote:"Court held that in the eight of decision, it was taken as settled that". . . Fourth Amendment's right of privacy has been declared enforceable against the states through the Due process Clause of the Fourteenth Amendment. Mapp Vs Ohio, 367 U.S. 643, 655. Powell vs Alabama, 287 U.S. 45, only last Term this was re-examined and it was held that provision of counsel in all criminal was" fundamental right, essential to a fair trial,"and thus was made obligatory on the state by the Fourteenth Amendment. Gideon Vs. Wainright, 372 U.S. 335, 344.

We, hold today that the Fifth Amendments exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgment by the states.

[fol. 46] Decision of the court's since Twining and Adamson departed from contrary view expressed in those cases.

(continue on page 7.)

The Fifth Amendment to the constitution of the United States, commansing that no person' shall be compelled in any criminal case to be a witness against himself."

The shift reflects recognition that the American system criminal prosecution is accussatorial, not inquisitorial, and that the Fifth Amendment privilege is its essential Mainstay. Roger Vs Richmond, 365 U.S. 534, U.S. (continue on page 8), Governments, states and federal, are thus constitutionally compelled to established guilt by evidence indepently and freely secured and may not by coercion prove a charge against an accused out of his own mouth. Since the Fourteenth Amendment prohibits the states from inducing a person to confess through"sympathy falsely aroused,"Spano vs New York, supra, at 322, or other like inducement far short of"compulsion by torture."Hayness vs Washington, supra, it follows a fortiori that it also forbides the state to resort to imprisonment, as here, to compel him to answer question that might incriminate him. The Fourteenth Amendment secures against state invasion the same privilege that the Fifth Amendment guarantees federal infrigement—the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will and to suffer no penalty, as held in Twining, for such silences. This conclusion is Fortified by our recent decision in Mapp Vs Ohio, 367 U.S. held "that in a prosecution in a state court a state crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure. "388 U.S., at 33, Mapp held that the Fifth Amendment privilege against self-incrimination implemented the Fourth Amendment in such cases, and that the two guarantees of personal, security conjoined in the Fourteenth Amendment to make the exclusionary rule obligatory up on the states. We relied upon the great case of Boyd Vs United States, 116 U.S. 616, which considering the Fourth and Fifth Amendment as running almost [fol. 47] that Breaking into a house and opening boxes and drqwers are circumstances of aggravation; but any forcible and compulsory of man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is without, (continue on page 8), condemnation of (those Amendments . . ."At

630, we said in Mapp; "We find that as to Federal Goverment, the Fourth and Fifth Amendments and, as to the states, the freedom from unscionable invasions of privacy and the freedom conviction upon coerced, confession do enjoy an"intimate relation' in their perpetuation of principles humanity and civil liberty (secured) 533, 544. The philosphy of each Amendment and of each freedom is complementary to, although not dependent upon, that of the other in its sphere of influence the very least that together they in either sphere is no man is to be convicted on unconstitutional evidence, "367 U.S. at 656-657. In thus returning to the Boyd view that the privilege is one of the "principles of a freedom government, "116 U.S., at 632, Mapp necessarily repudiated the Twining concept of the privilege as a mere rule evidence"best defended universal justice but as a law proved experience to be expedient,"best defended universal justice but as a law proved experience to be expedient,"211 U.S. at 113-continue on page 11).

"The privelege afforded not only extends to answer that would in themselves support a conviction . . but wise embrances those which would furnish a link in the chain of evidence needed to prosecute . . . if the witness, upon interposing his claim, were requred to prove the hazzard . . . he would be compelled to surrender the very protection which the privilege is designed to guarantee . . . To sustain the privilege, it need only be evident from the implication of the question, in the setting in which it is asked, that a responsive answer to the question or explaination of why it cannot be discloseure could result." 341 U.S. at 486-487.

[fol. 48] (See Eddie Dean Griffin, Petitioner, Vs State of California (April 28, 19/65. No: 202 . . . October Term, 1964. Mr. Justice Douglas delivered the opinion of the Court. On page 1) Petitioner was convicted of murder in the first degree after a jury trial in the California court. He did not testify at trial on the issue of guilt, though he did testify at the separate trial on the issue of penalty. The trial court instructed the issue of guilt, stating that a defendant has a constitutional right not to testify.

"As to any evidence or facts against him which the defendant can reasonably be expected to deny or explain be-

cause of facts within his knowledge, if he does not testify or if, though he does testify, he fails to explain such evidence, the jury may take that failure into consideration as tending to indicate the truth of such evidence and indicating that among the inference that may be reasonable drawn therefrom those unfavorable to the defendant are the more probable."

It added, however, that no such inference could be drawn as to evidence respecting which he had knowledge. It stated that failure of a defendant to deny or explain the evidence of which he had knowledge does not create a presumption of guilt nor by itself warrant an inference of guilt nor relieve the prosecution of any of its burden of proof.' (continue on page 2.)

If this were a federal trial, reversible error would have been committed. Wilson Vs United States, 149 U.S. 60 so holds. It said, however, that the Wilson decision rested not the Fifth Amendment, but on an Act of Congress, namely, 18 U.S.C. (3481. That indeed is the fact, as the Court in the Wilson case states. And see Adamson Vs California, 332, U.S. 287, 294. But that is the beginning, not the end of our inquiry. *The question remains whether, statute or not, the comment rule, approved by California, violates the Fifth Amendment.*

We think it does. It is in substance a rule of evidence that allows the state the privilege of tending to the jury for its consideration the failure of the accused to testify. no formal offer of proof is made as in other situations; but the prosecutor's comment and the court's acquience [fol. 49] are the equivalent of an offer of evidence and its acceptance.

(Argument)

It is not to be thought of, in a civilized community, for a moment, that any citizen put in jeopardy of life or liberty, should be debarred of counsel because he was too poor to employ such aid. No court court could be respected, or respect itself, to sit and entertain a layman's brief in Pro-Persona, when knowing all the time that he is unqualified to know whether or not an indictment or information is good or bad.

Respecting the State's grant of right to test their detention,"the Fourteenth Amendment weigh the interests of rich and poor criminals in equal scale, and its hand extends as far to each.

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. He needs the hand of counsel to assist him through every step of the proceeding.

"In any event, even if it is clear that the appellate court utilized the proper standard, a hearing is sometimes required if his decision presents a situation in which the"so called facts and their constitutional significance (Are) . . . So blended that they cannot be served in consideration. Under Thomas Vs Teets, (9th Cir.) 205 F.2d 236, 237, and cases cited therein, it is shown that when the state Supreme Court denied petitioner, petition for habeas corpus, without making any findings upon the allegations presented, by constitutional doctrine all allegations are taken as true, and the denial itself constitutes a denial of Due Process under the Federal Constitution. It also shows that state process in the case was inefective"to protect the rights of the prisoner."

[fol. 50] (Prayer)

Wherefore, petitioner acting in good faith with a good, just and meritorious cause for relief, in this Honorable Court of competent jurisdiction prays remedy and redress, of which he truly belives he is entitled and which is accorded by the correctional common-law of writ of Habeas Corpus.

That the herein petitioner has only presented the facts and features of the instant case to this Honorable Court to seek that inalienable right of justice, under the constitution of the United States and of the state of the instant case to this Honorable Court to seek that inalienable right of every citizen, of justice, under the constitution of the United States and of the state of California. And your

petitioner ask this Honorable court to order petitioner discharge from custody forthwith.

Respectfully Submitted,

/s/ Charles Anders
Petitioner In Pro*Per-
CHARLES ANDERS
Box-A-42880-A
Represa, California

June 23rd. 1965

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IN THE SUPREME COURT OF THE STATE
OF CALIFORNIA
IN BANK

Crim. No. 9122

[File Endorsement Omitted]

In re ANDERS
on Habeas Corpus.

ORDER DENYING WRIT OF HABEAS CORPUS—filed
July 14, 1965

Petition for writ of habeas corpus DENIED.

/s/ Traynor
Chief Justice

* * * *

[fol. 53]

[Clerk's Certificate to foregoing
transcript omitted in printing]

[fol. 54]

SUPREME COURT OF THE UNITED STATES

No. 493 Misc., October Term, 1965

CHARLES ROBERT ANDERS, PETITIONER

v.

CALIFORNIA

On petition for writ of Certiorari to the Supreme Court of the State of California.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—April 4, 1966

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1181 and placed on the summary calendar.

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